



Supreme Court

STATE OF ARIZONA

FROM THE OFFICE OF
WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

1501 WEST WASHINGTON STREET
SUITE 102
PHOENIX, ARIZONA 85007-3231
(602) 452-3436
FAX (602) 452-3498
officepdj@courts.az.gov

November 9, 2012

Arizona Supreme Court
Honorable Rebecca W. Berch, Chief Justice
1501 West Washington
Phoenix, Arizona. 85007

Re: Petition R-12-0002

Dear Chief Justice Berch:

The Attorney Regulation Advisory Committee (ARC) by letter dated May 8, 2012, previously opposed this petition for the reasons stated within that letter which is attached. A working group was requested to meet with the petitioners and to seek answers to ten questions from the Court to aid it in its consideration of this petition. The petitioners are submitting those answers separately. Out of those discussions the petitioners agreed to modify the original proposal and request this be made a pilot rule to expire in three years unless the Court takes additional action to retain the rule. The ARC Subcommittee on Admissions still opposes this petition.

ARC is deeply divided over this petition, but voted 4-3 on November 1, 2012, to recommend the approval of the petition only as a pilot program. The committee members remain troubled over the lack of clarity regarding the individual criteria for choosing which students will be approved by each school to take the bar examination. ARC is also troubled that this type of early testing has not been successful in other jurisdictions and perhaps has even been counterproductive for students.

Notwithstanding the foregoing, the majority was impressed by the stated commitment by the schools to put the students first and create a program that might be of benefit to law students. The majority believes that adoption of this rule could positively impact student wait time prior to employment and school employment statistics and also improve law school rankings. However, ARC, as stated in its previous letter of opposition, is concerned that such potential gains could be illusory. The practical realities are that successful testing does not guarantee early admission because applicants must successfully fulfill all admission requirements prior to being recommended for admission.

ARC is also aware that having law schools choose which students may sit for early testing is fraught with potential problems, especially since each school acknowledges it must, out of

limited resources, limit the number of students to early test. This delegation by the Court of its constitutional power to regulate the practice of law to the separate and changing criteria of each law school may raise equal protection issues and minimize third year learning opportunities.

Notwithstanding these concerns, the majority recommends approval of the petition as a pilot program to expire in three years unless further action is taken by the Court.

Three ARC members (Riemer, Watson, and Vessella) recommend the court not approve the revised proposal. Principal among their reasons are as follows.

1. The committee was told no other state has a rule as is being proposed in Arizona. While innovation is great as a concept, the lack of a similar rule in any other state should give the court cause for pause. Is this a proposal whose time has come or a proposal ahead of its time? The committee was told Georgia had such a rule, but rescinded it. It would be prudent to obtain additional information from Georgia as to why the rule was rescinded. If Georgia's law schools were not prepared to modify their curriculums for early bar examination takers and Arizona's law schools are, how will law schools under the proposed new rule counsel students as to whether they should choose the early bar examination track or stay on the more traditional track? Will students have to forgo law review, moot court, and other traditional third year activities in order to take the bar examination early? Will law schools be biased in favor of the early bar examination track to improve their employment after graduation statistics and U.S. News and World Report's rankings? As indicated by the majority, it should also be noted that early passage of the bar examination does not guarantee early admission as each student must also demonstrate the possession of good moral character to be admitted to the practice of law in Arizona.
2. If the third year of law school (a professional, not vocational, program) is not providing students with the skills and knowledge they need to compete in today's job market, law schools need to self-initiate curricular changes. They do not need a regulatory carrot to make the third year what it should be.
3. The impact of interjecting bar examination preparation and testing right in the middle of the third year on student learning and professional acculturation has not been carefully considered. And it moves law schools away from making positive changes in their curriculums for all students and places a premium on the educational experience for those chosen to prepare for early examination.
4. The proposed rule calls on law schools to determine if a student is academically prepared for early testing. What objective criteria will guide this determination? That the three in-

state law schools may develop appropriate and compatible standards in this area does not address the standards that will be used by the other 200 plus ABA-approved law schools in the U.S. The court needs to be assured that students who are not academically prepared for early testing are properly and timely screened out. Unprepared students risk having to take the bar examination multiple times which has its own financial and other consequences.

5. The argument is advanced that law school is too expensive and the adoption of this rule will allow students to seek employment sooner than they would otherwise. While this may be true, students can already qualify for graduation in less than three years, take an earlier bar examination, and seek earlier employment. Of course, earlier graduation triggers an earlier start date for the repayment of student loans. The proposed rule allows students to stay in school and continue the deferment of the repayment of their student loans until graduation, but does this "benefit" outweigh the potential negative effects on the third year as a capstone learning experience? The third year is the last opportunity students have to learn about the law and how to practice law. Bar examination study and passage catapults the learner into earner mode. Many decry the loss of professionalism in the profession. Helping students focus on earning rather than learning does nothing to reverse this trend.

Should the court approve the proposed rule, the minority concurs with the majority that the court should approve it on a temporary basis, establish a method to evaluate its benefits/negative effects, and consider the results of that evaluation before deciding whether to adopt the rule on a permanent basis.

Sincerely yours

A handwritten signature in black ink, appearing to read "W. J. O'Neil", written over the typed name.

Honorable William J. O'Neil
ARC Chair

Attachment